

### REMARKS

Claim 13 has been added. Claims 10-12 were previously cancelled. Accordingly, claims 1-9 and 13 are pending and at issue.

The rejection of claims 1-9 as unpatentable over Applicant's admitted prior art (AAPA) in view of Kingman 2,386,900 is respectfully traversed. The rejection is improper because it is based upon an improper modification of Applicant's disclosed prior art sanding block by Kingman.

As noted in Applicant's previous response, Applicant's disclosed prior art sanding block is for drywall finishing whereas Kingman is directed toward a scourer for kitchen utensils. One skilled in the art of drywall finishing would not look to the kitchen utensil teachings of Kingman while seeking to modify drywall sanding blocks. In response to this argument, the Examiner asserts that the reliance on Kingman is improper because it is in the field of Applicant's endeavor, which the Examiner broadly characterized as "handheld abrasive tools". However, there is absolutely nothing to support such a broad characterization of Applicant's field of endeavor other than a hindsight desire to use Kingman in rejecting the claims. The Examiner could have just as easily, and just as inaccurately, asserted that the field of endeavor was to handheld tools if that was what was required in order to bring in other irrelevant art in order to reject the claims. In this regard, it cannot be ignored that the title of the application is "Sanding Block", all of the claims are expressly directed to a "sanding block", and the field of the invention states that the application is directed towards "sanding blocks". Accordingly, the reliance on Kingman is improper.

Further in this regard, again as previously argued in Applicant's prior response, the problem addressed by Kingman, the vast diversity of shapes and sizes encountered in kitchen utensils or cookware, does not speak to the drywall sanding task associated with the drywall sanding block. In response to this argument, the Examiner mischaracterizes Applicant as arguing about Applicant's claimed abrasive block. However, Kingman isn't being combined with Applicant's claimed abrasive block. Kingman is being combined with the **AAPA, which is a drywall sanding block**. Accordingly, what Applicant claims is irrelevant to the impropriety of combining Kingman with the **AAPA** because it is the **AAPA** that is directed to a drywall sanding block that is useful for drywall sanding tasks and that does not encounter the problems addressed by Kingman, i.e., the vast diversity of shapes and sizes encountered in kitchen utensils and cookware. Accordingly, for this additional reason, the rejection is improper and should be withdrawn.

Again as expressly argued in Applicant's previous response, even if one skilled in the art of drywall finishing were to look look to kitchen utensil teachings, and specifically to Kingman, one so skilled would not see the teachings of Kingman's rigid core scouring device as being relevant or useful to the "flexible, compressible, polymeric foam" core sanding block of Applicant's acknowledged prior art. In this regard, the four different edge profiles of Kingman's scouring device are necessary because the rigid core of Kingman cannot conform to the diversity of shapes and curvatures presented by the variety of kitchen utensils and cookware that may require scouring in any given kitchen. This problem is not encountered with the Applicant's admitted prior art device because

it's "flexible, compressible, polymeric foam" core allows the sanding block to conform to any curved surface without requiring that the edge profile of the sanding block be closely matched to the curved surface being sanded. Thus, Kingman's teaching would provide no benefit to Applicant's admitted prior art device. As enunciated by the Supreme Court in *KSR International Co. v. Teleflex Inc.*, (82 USPQ2d at 1396) there must be some articulated reason with some rational underpinning to support the legal conclusion of obviousness. There can be no rational underpinning for modifying a reference with no apparent benefit, such as is done in the proposed modification. Accordingly, for this additional reason, the rejection is improper and should be withdrawn.

In response to the foregoing argument, the Examiner asserts that Kingman is relied upon to teach that edges of an abrasive block may be curved, **and not the core** which is taught by **AAPA**. However, in making a proper rejection under §103, the Examiner cannot simply ignore the parts of the prior art that are inconvenient and inconsistent with the modification the Examiner is attempting to propose. In short, under the case law and the rules set forth in the MPEP, Kingman must be considered as a whole and the assertion that the Examiner is not relying on Kingman's core is irrelevant to Applicant's argument. For this additional reason, the rejection is improper and should be withdrawn.

Next, the Examiner references Applicant's own disclosure in attempting to support the rejection by stating that:

Here, Applicant has disclosed that the curved edge prevents damage to the workpiece, while allowing the workpiece to be abraded. Similarly, Kingman teaches that a curved edge prevents damage to the workpiece, in that the curved edge removes unwanted material from the workpiece, while allowing the workpiece to be abraded,

The Examiner's express reliance on Applicant's disclosure of his invention in support of the rejection evidences the hindsight reconstruction of Applicant's claimed structure using Applicant's specification as a template. It is axiomatic that Applicant's disclosure of his own invention cannot be used as prior art in supporting rejection. For this additional reason, the rejection is improper and should be withdrawn.

Again, as expressly argued in Applicant's previous amendment, claim 1 characterizes both expansive sides as being abrasive, with each expansive side having a sharp edge and a curved edge. This structure is neither shown nor suggested by the AAPA, Kingman, or Hayes (previously relied on by the Board), taken alone or together. Indeed, quite the opposite, Applicant's admitted prior art device and Hayes both teach that all four edges of the expansive side should have the same profile and Kingman teaches that all four edges of the device should have different profiles. In this regard, Kingman expressly teaches away from the claimed structure by expressly requiring that each of its edges have a different profile so as to allow the rigid core scourer to better conform to the diversity of curved shapes that would be encountered in the kitchen utensils and cookware of a typical kitchen. The teachings of Kingman cannot be ignored in this regard. Accordingly, for this additional reason, the rejection of claims 1-9 should be withdrawn and the claims allowed. Contrary to the requirements of MPEP

§707.07(f), the current Office Action does not acknowledge or answer this argument and provides Applicant no guidance as to the Examiner's position on this argument. Because Applicant is entitled to have the substance of his arguments addressed when first presented, it is respectfully requested that, if the rejection of Kingman is repeated, this argument be expressly addressed by the Examiner in a non-final Office Action so that Applicant is not left with the choice of either appealing or filing a request for continued examination in order to respond to arguments by the Examiner that should be provided in the present Office Action.

Furthermore, again as argued in Applicant's previous amendment, claim 2 further distinguishes the references by characterizing the radius of one curved edge as being substantially equal to the radius of the other curved edge. Again, this structure is neither shown nor suggested in the applied references and is particularly taught away from by the teachings of Kingman which requires its four edges to each have a different profile from any of the other edges. Accordingly, for this additional reason, the rejection of claim 2 and its dependent claims should be withdrawn. Contrary to the requirements of MPEP §707.07(f), the current Office Action does not acknowledge or answer this argument and provides Applicant no guidance as to the Examiner's position on this argument. Because Applicant is entitled to have the substance of its arguments addressed when first presented, it is respectfully requested that, if the rejection of Kingman is repeated, this argument be expressly addressed by the Examiner in a non-final Office Action so that Applicant is not left with the choice of either appealing or filing

a request for continued examination in order to respond to arguments by the Examiner that should be been provided in the present Office Action.

In view of the foregoing, Applicant respectfully requests reconsideration of the rejections and allowance of the case.

Respectfully submitted,

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